

PART 3

SECTION 8

AGREEMENT FOR LANDSCAPE MAINTENANCE SERVICES

This Agreement for Landscape Maintenance ("Agreement") is made on this 14th day of May 2019, at Hermosa Beach, California, by and between the City of Hermosa Beach, a municipal corporation, 1315 Valley Drive, Hermosa Beach, California 90254 (hereinafter referred to as the "CITY") and _Merchants Landscape Services Inc. (hereinafter referred to as the "CONTRACTOR").

RECITALS

- A. CITY proposes to contract for Landscape Maintenance Services as set forth below in this Agreement;
- B. CONTRACTOR is willing to perform such services and has the necessary qualifications by reason of experience, preparation, and organization to provide the services described in Exhibit A.

NOW, THEREFORE, the CITY and the CONTRACTOR mutually agree as follows:

1. **SERVICES.** CONTRACTOR shall perform those services set forth in "Exhibit A" (Request for Proposal Document – Landscape Maintenance Services Agreement) which is attached hereto and incorporated herein by reference. By executing this Agreement, CONTRACTOR represents that it has (a) thoroughly investigated and considered the scope of services to be performed; (b) carefully considered how the services should be performed; and (c) understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement.
2. **TIME OF PERFORMANCE.** The services of CONTRACTOR are to commence upon receipt of a notice to proceed from CITY and shall be completed within the time period designated by CITY. The term of this Agreement shall be for the time period beginning July 1, 2019 and ending on June 30, 2022 unless extended in writing in advance by the CITY.
3. **PAYMENT FOR SERVICES.** CONTRACTOR shall be compensated in an amount not to exceed those amounts as listed on Part 3 Sections 5 of "Exhibit B" Compensation shall under no circumstances be increased except by written amendment of this Agreement. CONTRACTOR shall be paid within thirty (30) days of presentation of an invoice to CITY for services performed to CITY's satisfaction. CONTRACTOR shall submit invoices monthly describing the services performed, the date services were performed, a description of reimbursable costs, and any other information requested by CITY.
4. **CONTRACT ADMINISTRATION.**

- 4.1. **CITY's Representative.** Unless otherwise designated in writing the Maintenance Supervisor shall serve as the CITY's representative for the administration of the project. All activities performed by the CONTRACTOR shall be coordinated with this person.
 - 4.2. **Manager-in-Charge.** For the CONTRACTOR shall be in charge of the project on all matters relating to this Agreement and any agreement or approval made by her/him shall be binding on the CONTRACTOR. The Manager-in-Charge shall not be replaced without the written consent of the CITY.
 - 4.3. **Responsibilities of the CITY.** The CITY shall provide all relevant documentation in its possession to the CONTRACTOR upon request in order to minimize duplication of efforts. The CITY's staff shall work with the CONTRACTOR as necessary to facilitate performance of the services.
 - 4.4. **Personnel.** The CONTRACTOR represents that it has or will secure at its own expense all personnel required to perform the services under this Agreement. All of the services required under this Agreement will be performed by the CONTRACTOR or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. The CONTRACTOR reserves the right to determine the assignment of its own employees to the performance of the CONTRACTOR's services under this Agreement, but the CITY reserves the right, for good cause, to require the CONTRACTOR to exclude any employee from performing services on the CITY's premises.
 - 4.5. **Prevailing wage and certified payroll submission.** The prevailing wage scale, as determined by the Director of Industrial Relations of the State of California, in force on the day this proposal was submitted, will be the minimum paid to all craftsmen and laborers working on this project. It is understood that it is the responsibility of the bidder to determine the correct scale. Each CONTRACTOR and subcontractor and any lower-tier subcontractor shall submit certified payrolls with each invoice.
5. **TERMINATION.**
- 5.1. **Termination for Convenience.** Either party may terminate this Agreement without cause and in its sole discretion at any time by giving the other party thirty (30) days' written notice of such termination. In the event of such termination, the CONTRACTOR shall cease services as of the date of termination and shall be compensated for services performed to the CITY's satisfaction up to the date of termination.

- 5.2. **Termination for Cause.** All terms, provisions, and specifications of this Agreement are material and binding, and failure to perform any material portion of the work described herein shall be considered a breach of this Agreement. Should the Agreement be breached in any manner, the CITY may, at its option, terminate the Agreement not less than five (5) days after written notification is received by the CONTRACTOR to remedy the violation within the stated time or within any other time period agreed to by the parties. In the event of such termination, the CONTRACTOR shall be responsible for any additional costs incurred by the CITY in securing the services from another contractor.

6. INDEMNIFICATION.

- 6.1. CONTRACTOR shall indemnify, defend with counsel approved by CITY, and hold harmless CITY, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, and cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in this AGREEMENT, regardless of CITY'S passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the CITY. Should CITY in its sole discretion find CONTRACTOR'S legal counsel unacceptable, then CONTRACTOR shall reimburse the CITY its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the CITY (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.
- 6.2. The requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR as required by Section 17, and any approval of said insurance by CITY, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

7. INSURANCE REQUIREMENTS.

- 7.1. The CONTRACTOR, at the CONTRACTOR's own cost and expense, shall procure and maintain, for the duration of the contract, the following insurance policies:

- 7.1.1. **Workers' Compensation Coverage.** The CONTRACTOR shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for its employees in accordance with the laws of the State of California. In addition, the CONTRACTOR shall require any and every subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the CITY at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against the CITY, its officers, agents, employees, and volunteers for losses arising from work performed by the CONTRACTOR for City.
- 7.1.2. **General Liability Coverage.** The CONTRACTOR shall maintain commercial general liability insurance in an amount of not less than two million dollars (\$2,000,000) per occurrence for bodily injury, personal injury, and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit.
- 7.1.3. **Automobile Liability Coverage.** The CONTRACTOR shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the CONTRACTOR arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired, and non-owned vehicles, in an amount of not less than three hundred thousand dollars (\$300,000) combined single limit for each occurrence.
- 7.2. **Endorsements.** Each general liability and automobile liability insurance policy shall be issued by insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the specific language of Section 8.2.1 below.
- 7.2.1. "The CITY, its elected or appointed officers, officials, employees, agents, and volunteers are to be covered as additional insureds with respect to liability arising out of work performed by or on behalf of the CONTRACTOR, including materials, parts, or equipment furnished in connection with such work or operations."

- 7.2.2. This policy shall be considered primary insurance as respects the CITY, its elected or appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the CITY, including any self-insured retention the CITY may have, shall be considered excess insurance only and shall not contribute with this policy.
- 7.2.3. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.
- 7.2.4. The insurer waives all rights of subrogation against the CITY, its elected or appointed officers, officials, employees, or agents.
- 7.2.5. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents, or volunteers.
- 7.2.6. The insurance provided by this policy shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' written notice has been received by the CITY.
- 7.3. **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the CITY's option, the CONTRACTOR shall demonstrate financial capability for payment of such deductibles or self-insured retentions.
- 7.4. **Certificates of Insurance.** The CONTRACTOR shall provide certificates of insurance with original endorsements to the CITY as evidence of the insurance coverage required herein. Certificates of such insurance shall be filed with the CITY on or before commencement of performance of this Agreement. Current certification of insurance shall be kept on file with the CITY at all times during the term of this Agreement.
- 7.5. **Failure to Procure Insurance.** Failure on the part of the CONTRACTOR to procure or maintain required insurance shall constitute a material breach of contract under which the CITY may terminate this Agreement pursuant to Section 6.2 above.
- 7.6. **Nonpayment of Deductible.** The commercial general and automobile liability policies required by this Agreement shall allow City, as additional insured, to satisfy the self-insured retention ("SIR") and/or deductible of the policy in lieu of the CONTRACTOR (as the named insured) should CONTRACTOR fail to pay the SIR or deductible requirements. The amount of the SIR or deductible shall be subject to the approval of the City Attorney and the Finance Director. CONTRACTOR understands and agrees that satisfaction of this requirement is an express condition

precedent to the effectiveness of this Agreement. Failure by CONTRACTOR as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on CONTRACTOR'S behalf upon the CONTRACTOR'S failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against CONTRACTOR for breach of this Agreement in addition to any other damages incurred by City due to the breach.

8. **ASSIGNMENT AND SUBCONTRACTING.** The parties recognize that a substantial inducement to the CITY for entering into this Agreement is the professional reputation, experience, and competence of the CONTRACTOR. Assignments of any or all rights, duties, or obligations of the CONTRACTOR under this Agreement will be permitted only with the express consent of the CITY. The CONTRACTOR shall not subcontract any portion of the work to be performed under this Agreement without the written authorization of the CITY. If the CITY consents to such subcontract, the CONTRACTOR shall be fully responsible to the CITY for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between the CITY and subcontractor nor shall it create any obligation on the part of the CITY to pay or to see to the payment of any monies due to any such subcontractor other than as otherwise is required by law.
9. **COMPLIANCE WITH LAWS, CODES, ORDINANCES, AND REGULATIONS.** The CONTRACTOR shall use the standard of care in its profession to comply with all applicable federal, state, and local laws, codes, ordinances, and regulations.
 - 9.1. **Taxes.** The CONTRACTOR agrees to pay all required taxes on amounts paid to the CONTRACTOR under this Agreement, and to indemnify and hold the CITY harmless from any and all taxes, assessments, penalties, and interest asserted against the CITY by reason of the independent contractor relationship created by this Agreement. In the event that the CITY is audited by any Federal or State agency regarding the independent contractor status of the CONTRACTOR and the audit in any way fails to sustain the validity of a wholly independent contractor relationship between the CITY and the CONTRACTOR, then the CONTRACTOR agrees to reimburse the CITY for all costs, including accounting and attorneys' fees, arising out of such audit and any appeals relating thereto.
 - 9.2. **Workers' Compensation Law.** The CONTRACTOR shall fully comply with the workers' compensation law regarding the CONTRACTOR and the CONTRACTOR's employees. The CONTRACTOR further agrees to indemnify and hold the CITY harmless from any failure of the CONTRACTOR to comply with applicable workers' compensation laws.

The CITY shall have the right to offset against the amount of any compensation due to the CONTRACTOR under this Agreement any amount due to the CITY from the CONTRACTOR as a result of the CONTRACTOR's failure to promptly pay to the CITY any reimbursement or indemnification arising under this Section.

- 9.3. **Licenses.** The CONTRACTOR represents and warrants to the CITY that it has all licenses, permits, qualifications, insurance, and approvals of whatsoever nature which are legally required of the CONTRACTOR to practice its profession. The CONTRACTOR represents and warrants to the CITY that the CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, insurance, and approvals which are legally required of the CONTRACTOR to practice its profession. The CONTRACTOR shall maintain a City of Hermosa Beach business license, if required under CITY ordinance.
10. **CONFLICT OF INTEREST.** The CONTRACTOR confirms that it has no financial, contractual, or other interest or obligation that conflicts with or is harmful to performance of its obligations under this Agreement. The CONTRACTOR shall not during the term of this Agreement knowingly obtain such an interest or incur such an obligation, nor shall it employ or subcontract with any person for performance of this Agreement who has such incompatible interest or obligation.
11. **NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** The CONTRACTOR represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of race, religion, color, medical condition, sex, sexual orientation and/or gender identity, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition.
12. **RECORDS AND AUDITS.** The CONTRACTOR shall maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the CITY or any authorized representative, and will be retained for three years after the expiration of this Agreement. All such records shall be made available for inspection or audit by the CITY at any time during regular business hours.
13. **OWNERSHIP OF DOCUMENTS.** It is understood and agreed that the CITY shall own all documents and other work product of the CONTRACTOR, except the CONTRACTOR's notes and work papers, which pertain to the work performed under this Agreement. The CITY shall have the sole right to use such materials in its discretion and without further compensation to the CONTRACTOR, but any re-use of such documents by the CITY on any other project without prior written consent of the CONTRACTOR shall be at the sole

risk of the CITY. The CONTRACTOR shall at its sole expense provide all such documents to the CITY upon request.

14. **INDEPENDENT CONTRACTOR.** The CONTRACTOR is and shall at all times remain as to the CITY a wholly independent CONTRACTOR. Neither the CITY nor any of its agents shall have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees or agents, except as herein set forth. The CONTRACTOR shall not at any time or in any manner represent that it or any of its agents or employees are in any manner agents or employees of the CITY. The CONTRACTOR shall have no power to incur any debt, obligation, or liability on behalf of the CITY or otherwise act on behalf of the CITY as an agent.
15. **NOTICE.** All Notices permitted or required under this Agreement shall be in writing, and shall be deemed made when delivered to the applicable party's representative as provided in this Agreement. Additionally, such notices may be given to the respective parties at the following addresses, or at such other addresses as the parties may provide in writing for this purpose.

Such notices shall be deemed made when personally delivered or when mailed forty-eight (48) hours after deposit in the U.S. mail, first-class postage prepaid, and addressed to the party at its applicable address.

CITY OF HERMOSA BEACH
1315 Valley Drive
Hermosa Beach, CA 90254

Attention: Ells Freeman, Superintendent
Public Works Department

CONTRACTOR:

Merchants Landscape Services, Inc.

Attention: Patrick Healy

16. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of California.
17. **ENTIRE AGREEMENT; MODIFICATION.** This Agreement supersedes any and all other agreements, either oral or written, between the parties, and contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein. Any

agreement, statement, or promise not contained in the Agreement, and any modification to the Agreement, will be effective only if signed by both parties.


18. **ATTORNEYS' FEES.** In any action brought to declare the rights granted herein or to enforce any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees in an amount determined by the court.
19. **WAIVER.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision under this agreement. Payment of any invoice by the CITY shall not constitute a waiver of the CITY's right to obtain correction or replacement of any defective or noncompliant work product.
20. **EXECUTION.** This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.
21. **AUTHORITY TO ENTER AGREEMENT.** The CONTRACTOR has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party.


IN WITNESS WHEREOF, the parties have executed this Agreement the 14th day of May 2019

CONTRACTOR: Merchants Landscape Services Inc.



Mark Brower, President

CITY OF HERMOSA BEACH:


Aerino

Department Director


Suja Lowenthal, City Manager


ATTEST:


City Clerk

APPROVED:


Mayor

APPROVED AS TO FORM:


City Attorney